IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.WRIT PETITION NO. 1119 of 2004

Pralhad Akaru Chavan ..Petitioner

V/s

State of Maharashtra ..Respondent

Shri Rajan Salvi for Petitioner (appointed)

Shri M.M.Deshmukh,A.P.P. for State

CORAM:A.S.OKA,J.

DATED:19th August 2005

P.C.:-

1. Heard Advocate for the Petitioner and learned A.P.P. for State.

2. This petition is filed by the Petitioner through jail challenging the order dated 3rd December 2003 passed by the Deputy Inspector General of Prisons, western Region, by which application for furlough leave made by the Petitioner under the Prisons (Bombay Furlough and Parole) Rules, 1959 has been rejected.

3. In several petitions which are filed through the Jail, this Court has repeatedly noticed that the

applications made by the prisoners for grant of furlough leave are being disposed of in a very casual manner. I find that the applications are being rejected by passing short orders by placing reliance only on so called adverse police reports.

4. In the present case, the age of the Petitioner is stated to be 85. Earlier he has been granted furlough leave. The ground given for rejection of furlough leave in the impugned order is that surety suggested by the Petitioner is not proper and respectable and the surety will not be in a position to control the Petitioner. The second ground is that there is enmity between the Petitioner and complainant and his group and therefore there is likelihood of offence being committed and third ground is adverse police report.

5. Perusal of the adverse police report dated 5th/14th July 2003 shows that there is enmity between the Petitioner and relatives of deceased/complainant and apprehension expressed in report is that if the applicant is granted furlough leave, serious offence may be committed. When a person is convicted for commission of offence there is bound to be some enmity between the said person and relatives of victim or the complainant. Mere apprehension that some offence may be committed will not attract sub -Rule 4 of Rule 4 of the said Rules. The ground of rejection provided in Sub Rule 4 is that release on furlough leave is not recommended by the

District Magistrate on the ground of public peace and tranquillity. Mere apprehension without there being any basis is no ground to invoke the ground of rejection provided in Sub Rule 4 of Rule 4 of the said Rule. It is not the case of the Police that when the Petitioner was earlier released on furlough leave, there is any incident or that he has committed any offence. There is no report on record of the District Magistrate stating that public peace and tranquillity will be affected in case the Petitioner is enlarged on furlough leave.

6. The Police report which is signed by the Deputy Superintendent of Police, Solapur records that surety offered by the Petitioner is not proper and respectable. No details are given in the report to indicate as to why said surety cannot be accepted. It is merely stated that surety will not be in a position to control the Petitioner.

7. It is pertinent to note that age of the prisoner is stated to be 85 years. In my view the order rejecting the application for furlough leave is totally unsustainable. In fact this is a case where on the basis of material on record the furlough leave deserves to be granted in favour of the Petitioner. However, I am not issuing any mandatory order as order of rejection is passed more than one and half years ago.

8. Hence I am directing that the application for

furlough leave has to be considered afresh within a time bound programme. It is made clear that application for furlough leave cannot be rejected on the grounds which are mentioned in police report dated 5th/14th July 2003. Hence I pass the following order :

i. The impugned order dated 3rd December 2003 is quashed and set aside.

ii. The application for furlough leave made by the Petitioner on 28th March 2003 shall be considered afresh by the competent authority in the light of observations made in this judgment. The application shall be disposed of within 4 weeks from the date of receipt of writ of this order.

ii. Copy of this order be forwarded to the Petitioner.

(A.S.OKA, J.)